

Municipal Police Training Committee

Monthly Meeting Minutes

Boylston Police Academy

August 17, 2016

Call to Order

At 9:35 AM, Chairman Jim Hicks called the monthly meeting of the Municipal Police Training Committee to order and greeted all present.

Attendees

Chairman Jim Hicks – Northeast Mass; Undersecretary Jennifer Queally - EOPSS; Joseph Vieira – MPA; Michael Botieri – Southeast Mass; Chief Thomas O'Donnell- Central Mass; Chief Scott Livingstone- Western Mass; Matt Roy – MSP; Chief Brian Kyes –Mass Chiefs; Mike Chapman -Boston

MPTC Staff

Dori Ference, Lisa Lane, Dan May, Marylou Powers, Lara Thomas, Joseph Witkowski, Dan Zivkovich and Sheila Gallagher.

Guests

Rick Cipro, Norm Charest, Tom Fleming, Chief Frank Frederickson, Kevin Hope, Jeff Lenti, Lexie Reynolds, Peter Roddy, Mark Smith, David Solet, Mary Strother, and Shannon Sullivan.

Review/Approval of Minutes

A motion was made, seconded and passed to accept the Minutes of July 17, 2016. The motion passed by unanimous voice with two abstentions.

Police Standards and Training

The following requests were presented and approved by the Committee:

Temporary Waivers:

David Aguilar	Rehoboth, PD
Erick Fredette	Athol PD
Todd Kuczewski	Dighton PD
Shauna Slater	Stockbridge PD
Dustin Summers	Holyoke PD

A motion was made to approve the requests for temporary waivers. The motion passed by unanimous voice. There was no further discussion.

Permanent Exemptions:

There were no requests for permanent exemptions and there were no disciplinary hearings.

Litigation

ED Zivkovich reported that former recruit officer Cummings, has filed an appeal with the Massachusetts Commission Against Discrimination ("MCAD") as well as a federal lawsuit. The primary issue in the lawsuit does not focus on the fitness standards in the academy. Cummings is challenging the MPTC's ability to set a fitness standard, the reasonableness of that standard and why the request for an accommodation was denied.

Open Discussion

The status of filling the Boylston Academy Director position will be addressed in the Executive Director's report.

Executive Director Report

Recruit Officer Training Updates

Boston: anticipating a class of at least 65 Boston officers in December. There are numerous requests from outside agencies.

Boylston: No academy dates scheduled at this time.

Lowell: 55 officers remain and graduation is expected on November 4, 2016.

SPMA: presently in week 19 with 45 recruits, and graduation is expected on September 23, 2016.

NECC: 48 officers remain in week 17 of the academy.

Plymouth: 62nd ROC is in week 19 with 46 officers remaining and graduation is expected on September 23, 2016. The next class will begin on October 31, 2016.

Randolph: currently in week 3 of the academy with 48 officers.

Reading: 41 officers graduated on August 16, 2016, from the 25th ROC. The next class is scheduled to begin on September 12, 2016.

Springfield: started with 61 officers and currently 55 officers remain. Graduation is expected on November 10, 2016.

Transit: 36 officers remain and graduation is expected on September 16, 2016.

WMASS: 41 officers in the academy and graduation is scheduled for September 21, 2016. The next class is scheduled to begin on November 7, 2016.

Worcester: The next class of approximately 33 is expected to begin in either December or January.

Training Numbers

Right now there are 54 full time applications submitted for recruit academies according to the expressions website. There are 36 seats available in Western Mass and 18 seats available in Plymouth.

Budget

ED Zivkovich reported that there is approximately a 400K reduction in this year's budget when compared to FY 16. The fixed costs for the MPTC are estimated to be around \$3 million. One issue that continues to be a problem for the MPTC is the agency's inability to carry money in the recruit training account over from the one fiscal year to the next to cover the costs of the recruits.

ED Zivkovich distributed a report that highlighted the MPTC's expenditures for TY 2017. A significant portion of the budget will pay for the new database and the recruit curriculum overhaul project under FORCE Concepts. ED Zivkovich estimates that FORCE Concepts will have the final curriculum completed by the spring. Although the database has a significant cost associated with it, ED Zivkovich explained that the database is a critical purchase. Unlike other vendors, this database has high functionality, security and furnishes the servers. Police departments will have direct access to the database, and they will be able to verify which officers completed training. There was some discussion with regard to how many full time police officers there are and how many reserves. ED Zivkovich relayed that departments are not required to provide the MPTC with numbers but this database will assist in rectifying the issue. Ed Zivkovich anticipates that all the data from the old database will be migrated to the new system by October or November.

There was some further discussion about the costs affiliated with instructor recertification and renewal of the MILO system. Additionally, ED Zivkovich announced that because the MPTC cannot pay for LEEDA classes, the MPTC may be offering to host LEEDA at a cost.

There was further discussion about the budget and how the MPTC subsidizes the differential cost for each recruit in an academy. Chief Hicks explained that the legislators appear to be confused with how the MPTC's retained revenue account works. Essentially, the money collected per student is insufficient to cover the expenses associated with a recruit academy.

Joseph Vieira asked if the MPTC could postpone the leadership training offered at Endicott College due to its cost. ED Zivkovich said that no further sessions are being rolled out at Endicott but currently the MPTC had already committed to a second training which was starting today. There was further discussion about consolidating facilities.

Chief O'Connell took the opportunity to address the Committee and relay the concerns of the Central Mass Chiefs. If the Boylston Academy closes, the Central Mass Chiefs want to know so they can pursue other academy options. ED Zivkovich stated he appreciates the concerns of the Central Mass Chiefs and that he has no intention to close the Boylston Academy because he realizes its value to them. Unfortunately, the reduced budget and the declining enrollment

numbers keep him from filling the academy director position at this time. Nonetheless, the MPTC is committed to restarting recruit training in Boylston. The timing will be dependent upon enrollment numbers and the budget.

Chief Hicks responded that it is critical that there be a facility available in Central Mass. After further discussion about the future of the Boylston academy, Chief O'Connell asked if ED Zivkovich could provide him with a breakdown of the number of full -time and self- sponsored recruits within the academies and their agencies.

ED Zivkovich asked the Committee what their final thoughts were with regard to balancing the budget for TY 2017. Right now the MPTC is not offering specialized training for Ty 2017. There was additional discussion as to whether the Committee needed to vote on making a formal request to ED Zivkovich asking for an additional report on the budget. It was determined that a vote was not necessary.

In-service

Dori Ference reported that all the materials for the train-the-trainer sessions are set and the trainings are scheduled. All inservice materials this year were produced at no cost to the MPTC.

Dori Ference also announced that there is no curriculum for the active shooter course because it is just a review. Active shooter inservice is a classroom review of the material and does not include practical exercises.

Old Business

Chief Frederickson from Yarmouth PD asked whether the Committee would consider changing the inservice requirements this year. The concern for many chiefs from the Cape & Islands is the addition of the extra day required to satisfy inservice. As a review the requirements for TY 2017 inservice are listed below:

- 6 hours of legal**
- 3 hours of youth interactions**
- 3 hours of elderly issues**
- 3 hours of active shooter (tabletop)**
- 3 hours of dynamics of addiction**
- 3 hours of defensive tactics**
- 3 hours of local option**

Chief Frederickson relayed that the addition of two 3 hour classes has increased overtime costs for departments. Unlike prior years, the MPTC is not offering CPR/1st responder as an inservice course. One suggestion that Chief Frederickson offered was cutting out the block of elderly issues. There was further discussion as to whether the inservice requirements should be changed. Chief Livingstone added that he was not comfortable changing the inservice requirements at this point particularly since each region was notified what the Committee was requiring for TY 2017.

Chief Hicks added that the Committee voted on topics for Ty 2017 inservice back in April 2016. The Committee solicited input from the chiefs and departments as to what topics were significant for this training year. After further discussion, Chief Livingstone made a motion for the Committee to reconsider the previous vote on mandatory training for fiscal year 2017. The motion was seconded and passed with one opposition.

A motion was made to amend the mandated hours from the previous motion. There was no discussion. No second was made since there was no change to the inservice requirements based on the prior motion. Chief Hicks asked if there was a motion on the table. Since there was no change, no motion was made and the requirements for the current mandate remain the same.

New Business

Before the next agenda item was discussed, Lt. Chapman from the Boston Police Academy recused himself. The record reflects that Lt Chapman left the room while the Committee discussed the issue regarding the former Boston Police Academy recruit, Claude DeFay whom the MCAD ordered be reinstated to the academy.

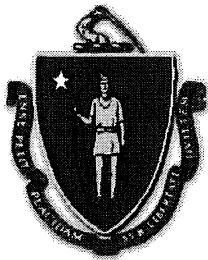
Shannon Sullivan distributed a copy of the letter that EOPPS and the Committee drafted and intended to send to the MCAD asking for reconsideration of its remedy on the Claude DeFay matter. Previously, the MCAD issued an order that reinstated Claude DeFay to the Boston Police Academy and did not require DeFay to retake the academic portion. The issue is that DeFay was dismissed from the academy six years ago and the MCAD's order does not comply with MPTC standards, and appears to be contrary to the M.G.Ls. Because the city of Boston did not appeal the MCAD decision, the Committee is trying to get the MCAD to revisit its decision and thus maintain compliance with MPTC standards for police recruits. Chief Hicks suggested that the Committee should vote as to whether it should send this letter to the MCAD. A motion was made as to whether the Committee should send a letter that includes signatures from all the Committee members to the MCAD. The motion was seconded and passed by unanimous voice. There were no abstentions. All present Committee members signed the letter for the MCAD and it is attached to the minutes.

Next Meeting

Wednesday, September 21, 2016, 9:30 AM at Randolph Police Academy.

Adjournment

The motion was made, seconded and passed at 12:35pm to adjourn.



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KARYN E. POLITO
Lt. Governor

DANIEL BENNETT
Secretary

August 17, 2016

BY HAND DELIVERY

Betty E. Waxman, Esq.
Massachusetts Commission Against Discrimination
One Ashburton Place, Suite 601
Boston, MA

RE: Claude Defay v. Boston Police Department, Docket No. 11-BEM-03416

Dear Attorney Waxman:

The Executive Office of Public Safety and Security (EOPSS) and the Municipal Police Training Committee (MPTC) respectfully request reconsideration of a portion of your Order, dated December 28, 2015, in the matter of Claude Defay v. Boston Police Department, specifically part (2), which requires the Boston Police Department (BPD) to "[r]einstat[e] [Mr. Defay] to the next Recruit Training Academy with credit for having successfully completed the Academic portion of the course." As you know, Mr. Defay was dismissed from the Boston Police Academy in 2011 as the result of an integrity violation. Your decision notes:

"Integrity violations include lying, cheating, stealing, acts of academic dishonesty, and plagiarism. Police Commissioner Edward Davis issued a memo on January 20, 2010 which specified that termination would be the presumptive disciplinary action in cases of untruthfulness on the part of any police officer." (Pages 3-4)

Your decision further acknowledges that a preponderance of the evidence indicates Mr. Defay, did indeed commit such a violation, warranting the imposition of disciplinary action by the Boston Police Academy. However, you found that the Boston Police Academy exhibited a pattern of imposing discipline in a manner that was not racially neutral and therefore ordered a number of remedies. Please note that we take no position whatsoever with respect to the merits of the case or your findings. EOPSS and the MPTC do, however, share grave concerns regarding the implications of the particular remedy articulated in part (2) of your Order. We fear the proposed Order, as presently framed, could have unintended but dire consequences for Mr. Defay, his future employer, and the public that all police officers are sworn to protect.

As you may know, the MPTC, overseen by EOPSS, is charged with establishing the training standards with which all full-time law enforcement officers must comply in order to exercise police powers in Massachusetts. M.G.L. c. 41, § 96B states, in part:

“Every person who receives an appointment to a position on a full-time basis in which he will exercise police powers in the police department of any city or town, shall, prior to exercising police powers, be assigned to and satisfactorily complete a prescribed course of study approved by the municipal police training committee.”

Complying with your Order, as presently drafted, would violate M.G.L. c. 41, § 96B if Mr. Defay were to ever attempt to exercise police powers because he will have failed to satisfactorily complete such a prescribed course of study.

We became aware of your decision when BPD contacted the MPTC for guidance as to whether part (2) of your Order would require BPD to violate 550 CMR 3.00 *et seq.* This portion of your Order is in conflict with both the spirit and intent of the regulation. 550 CMR 3.00 *et seq.* does not contemplate the possibility of a student recruit leaving an academy (under any circumstances) and being permitted to return over five years later as though merely continuing where he or she left off, and for good reason.

Police officers today are faced with an incredibly challenging environment. In Massachusetts, we ascribe to the belief that police officers must be guardians of their communities, charged with protecting the public's rights and safety. We are doing everything we can to ensure that police officers trained in Massachusetts are working to build and maintain positive relationships with their communities and are accessible resources to be trusted, appreciated, and utilized by every member of the communities they serve. Massachusetts is a leader among states in continually improving our training to reflect best practices. We take very seriously our responsibility to ensure our recruits are learning how to engage their communities with respect, integrity, dignity, and understanding.

A fundamental cornerstone of a police officer's ability to appropriately engage with the public is their understanding of the Constitution. A robust knowledge of the law, especially constitutional law, and the ability to apply that law equally, are critical to policing and establishing legitimacy as an officer within the community. As such, constitutional law and learning how to truly respect the rights of every person while exercising police powers is heavily concentrated early in the academic portion of the academy to provide a foundation upon which the remaining training is layered. Later skills-based training, such as defensive tactics and patrol procedures, cannot be meaningfully understood without the constitutional lens through which they need to be applied. Mr. Defay would miss this most critical element of police training should he be exempted from the academic portion of the academy.

Mr. Defay's limited academy experience over five years ago is not a reasonable substitute for completing the entirety of the current full-time academy. Police training is by no means a static curriculum. We are constantly reviewing, updating, and adding to our training requirements. The full-time recruit academy was 800 hours in 2010. Since Mr. Defay's separation from the academy, we have added nearly three full weeks of mandatory curriculum. In addition to changes in the foundational case law, our academies have also increased training with respect to implicit bias, discrimination, and engaging with unique populations, such as individuals with mental illness and those who struggle with addiction. “Fair and impartial policing” has become a primary emphasis over the past five years, ensuring that our officers are familiar with the most recent trends in positive and successful community policing.

Policing is a perishable skill which must be practiced and reinforced. As you will note in 550 CMR 3.04(3), even police officers who have previously engaged in the appropriate training and exercised police powers, but have since left active service in Massachusetts for more than five years, are expected to complete an *entire full-time academy* should they wish to once again exercise police powers:

“Interruptions of Five or More Years. Completion of a police academy for full-time police officers, or a reserve/intermittent training program for reserve/intermittent police officers,

subject to employment and compliance with admission requirements, or, in the discretion of the Committee, completion of alternative training requirements set forth by the Committee."

The MPTC does have the discretion to dictate alternative training in lieu of a full-time academy, but only for those who were at one time authorized to use police powers, not someone in Mr. Defay's position. As an example of how rigorously the MPTC applies this standard, it recently voted to require completion of a reserve academy for an individual who had served as a Massachusetts police officer for over ten years, then as a FBI special agent for more than twenty years, before returning to service with a municipality as the police chief.

The exercise of police powers is a responsibility of utmost significance. If Mr. Defay were to assume these powers without adequate training, and without demonstrating that he is able to shoulder the enormous burden that is the authority to exercise police powers, he would be in a position to inflict tremendous damage on the community and could ultimately cause substantial harm to himself as well.

Accordingly, we strongly recommend that your remedy be amended to require Mr. Defay's completion of a full-time police academy in its entirety. Police training is our area of expertise and we consider no option requiring less training than a full-time academy for new police officers to be adequate. It is our understanding that Mr. Defay has raised the possibility of "auditing" the academic portion of the academy, meaning he would attend classes but not be tested on the material. This is not sufficient. Testing is a critical component of the curriculum for a myriad of reasons, including demonstrating competency, integrity, and ability to function under pressure. Proving mastery of the material under challenging circumstances by successfully completing examinations is an invaluable component of well-rounded training. "Auditing" any portion of the academy would not demonstrate satisfactory completion of a prescribed course of study as required by M.G.L. c. 41, § 96B. Completion of a full-time academy in its entirety is in the best interest of Mr. Defay, BPD, and the community if Mr. Defay intends to exercise police powers in a lawful and responsible manner.

Respectfully,



Daniel Bennett
Secretary of Public Safety and Security



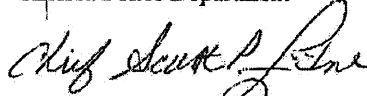
James Hicks
Chair, Municipal Police Training Committee
Chief of Police, Natick Police Department
President, Massachusetts Chiefs of Police
Association



Chief Michael Botieri
Plymouth Police Department



Chief Brian Kyes
Chelsea Police Department



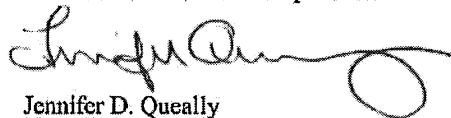
Chief Scott Livingstone
Amherst Police Department



Assistant Attorney General James O'Brien
Chief Trial Counsel
Office of the Attorney General



Chief C. Thomas O'Donnell
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Jennifer D. Queally
Undersecretary for Law Enforcement
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Captain Matthew Roy
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Massachusetts State Police



Officer Joseph Vieira
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Dartmouth Police Department

cc: Chairwoman Jamie R. Williamson, MCAD
Commissioner Sunila Thomas George, MCAD
Commissioner Charlotte Golar Richie, MCAD